

REMARKS

Applicant's counsel thanks the Examiner for the careful consideration given the application. The specification has been amended to provide appropriate headings as the Examiner has requested. Claim 19 and claim 35 have been amended as the Examiner has requested in order to resolve the concerns under 35 USC § 112, second paragraph.

The Examiner has rejected the claims under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 4,956,551 in view of U.S. Patent No. 5,923,434. However, upon more careful examination, U.S. Patent No. 4,956,551 is not relevant state of the art with regard to the present invention. US '551 describes a sensor for consumption measurements in a household consumption measuring system. In contrast, the present invention concerns a device for measuring transmission and reflection properties of objects and surfaces. Therefore, a person skilled in the art would not take into account US '551 to come to the present invention. In the apparatus of US '551, the properties of a surface are not measured, but rather pulses reflected from a plate on a rotating cylinder are counted.

According to the Examiner, a retaining means with an elastic retention of the optical measuring base unit is disclosed in the abstract of US '551. However, the abstract just discloses that the position of the reflex photoelectric barrier meter and the reflex photoelectric barrier receiver is adjustable in the housing. Of course, "elastic" does not mean "adjustable". The description of US '551 shows that the position is not elastic with regard to the measurement surface. For example in column 4, lines 50 to 55, a screw spindle drive is disclosed, which is a longitudinal adjustment means. Of course, such screw spindle drives are not elastic but fixed in an adjusted position.

Furthermore, the Examiner is of the opinion that it would have been obvious to modify US '551 with the touch-down means as taught by Lex to control the position between the measuring device and the housing. In the case of US '551, controlling of the position between the measuring surface and the housing is not necessary, because the housing is not in direct contact with a measurement surface but the distance and the position is predetermined by a cover plate for (see for example Fig. 2). Therefore, the position of the housing is predetermined with respect to the surface 11.

Furthermore, since no elastic means are disclosed in US '551, also the feature of claim 1 and 5, that a base surface of said optical measuring base unit assumes a predetermined elastically adjustable position relative to the housing in the unpositioned state is not disclosed in US '531 and therefore not obvious.

Accordingly, it is clear that the claims as now presented define over the applied references. For these reasons, it is believed that the claims as now presented are in condition for allowance, which is respectfully requested.

If any further fees are required by this communication, please charge such fees to our Deposit Account No. 16-0820, Order No. 33398.

Respectfully Submitted,
PEARNE & GORDON LLP

By John P. Murtaugh
John P. Murtaugh, Reg. No. 34226

1801 East 9th Street
Suite 1200
Cleveland, Ohio 44114-3108
Phone: 216-579-1700

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